

§ 1.41

or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number in an application that has an Office action to which a reply is due, but insufficient time remains for the applicant to file a reply. See § 41.5 of this title for withdrawal during proceedings before the Patent Trial and Appeal Board.

[69 FR 49997, Aug. 12, 2004, as amended at 70 FR 56128, Sept. 26, 2005; 77 FR 46624, Aug. 6, 2012; 77 FR 48814, Aug. 14, 2012]

WHO MAY APPLY FOR A PATENT

§ 1.41 Inventorship.

(a) An application must include, or be amended to include, the name of the inventor for any invention claimed in the application.

(b) The inventorship of a nonprovisional application under 35 U.S.C. 111(a) is the inventor or joint inventors set forth in the application data sheet in accordance with § 1.76 filed before or concurrently with the inventor's oath or declaration. If an application data sheet is not filed before or concurrently with the inventor's oath or declaration, the inventorship is the inventor or joint inventors set forth in the inventor's oath or declaration, except as provided for in §§ 1.53(d)(4) and 1.63(d). Once an application data sheet or the inventor's oath or declaration is filed in a nonprovisional application, any correction of inventorship must be pursuant to § 1.48. If neither an application data sheet nor the inventor's oath or declaration is filed during the pendency of a nonprovisional application, the inventorship is the inventor or joint inventors set forth in the application papers filed pursuant to § 1.53(b), unless the applicant files a paper, including the processing fee set forth in § 1.17(i), supplying the name or names of the inventor or joint inventors.

(c) The inventorship of a provisional application is the inventor or joint inventors set forth in the cover sheet as

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prescribed by § 1.51(c)(1). Once a cover sheet as prescribed by § 1.51(c)(1) is filed in a provisional application, any correction of inventorship must be pursuant to § 1.48. If a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is the inventor or joint inventors set forth in the application papers filed pursuant to § 1.53(c), unless applicant files a paper including the processing fee set forth in § 1.17(q), supplying the name or names of the inventor or joint inventors.

(d) In a nonprovisional application under 35 U.S.C. 111(a) filed without an application data sheet or the inventor's oath or declaration, or in a provisional application filed without a cover sheet as prescribed by § 1.51(c)(1), the name and residence of each person believed to be an actual inventor should be provided when the application papers pursuant to § 1.53(b) or § 1.53(c) are filed.

(e) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is the inventor or joint inventors set forth in the application data sheet in accordance with § 1.76 filed with the initial submission under 35 U.S.C. 371. Unless the initial submission under 35 U.S.C. 371 is accompanied by an application data sheet in accordance with § 1.76 setting forth the inventor or joint inventors, the inventorship is the inventor or joint inventors set forth in the international application, which includes any change effected under PCT Rule 92 *bis*.

[77 FR 48814, Aug. 14, 2012]

§ 1.42 Applicant for patent.

(a) The word “applicant” when used in this title refers to the inventor or all of the joint inventors, or to the person applying for a patent as provided in §§ 1.43, 1.45, or 1.46.

(b) If a person is applying for a patent as provided in § 1.46, the word “applicant” refers to the assignee, the person to whom the inventor is under an obligation to assign the invention, or the person who otherwise shows sufficient proprietary interest in the matter, who is applying for a patent under § 1.46 and not the inventor.

(c) If fewer than all joint inventors are applying for a patent as provided in § 1.45, the phrase “the applicant” means the joint inventors who are applying for the patent without the omitted inventor(s).

(d) Any person having authority may deliver an application and fees to the Office on behalf of the applicant. However, an oath or declaration, or substitute statement in lieu of an oath or declaration, may be executed only in accordance with § 1.63 or 1.64, a correspondence address may be provided only in accordance with § 1.33(a), and amendments and other papers must be signed in accordance with § 1.33(b).

(e) The Office may require additional information where there is a question concerning ownership or interest in an application, and a showing may be required from the person filing the application that the filing was authorized where such authorization comes into question.

[77 FR 48815, Aug. 14, 2012]

§ 1.43 Application for patent by a legal representative of a deceased or legally incapacitated inventor.

If an inventor is deceased or under legal incapacity, the legal representative of the inventor may make an application for patent on behalf of the inventor. If an inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention. *See* § 1.64 concerning the execution of a substitute statement by a legal representative in lieu of an oath or declaration.

[77 FR 48815, Aug. 14, 2012]

§ 1.44 [Reserved]

§ 1.45 Application for patent by joint inventors.

(a) Joint inventors must apply for a patent jointly, and each must make an inventor’s oath or declaration as required by § 1.63, except as provided for in § 1.64. If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the other joint inventor or inventors may make the application for patent on behalf of themselves and

the omitted inventor. *See* § 1.64 concerning the execution of a substitute statement by the other joint inventor or inventors in lieu of an oath or declaration.

(b) Inventors may apply for a patent jointly even though:

(1) They did not physically work together or at the same time;

(2) Each inventor did not make the same type or amount of contribution; or

(3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter disclosed in the provisional application and the provisional application will be considered to be a joint application under 35 U.S.C. 116.

[77 FR 48815, Aug. 14, 2012]

§ 1.46 Application for patent by an assignee, obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter.

(a) A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties.

(b) If an application under 35 U.S.C. 111 is made by a person other than the inventor under paragraph (a) of this section, the application must contain an application data sheet under § 1.76 specifying in the applicant information section (§ 1.76(b)(7)) the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter. If the